

S/P-6127-4A

C-DR. McGhee

To: The Secretary

MAR 3 1961

Through: S/S

OFFICE OF DIRECTOR

From: AIR - Foy D. Kohler

S/P

Subject: Contingency Planning

Attached (Tab B) for your approval and for subsequent submission to the President (Tab A) is the most recent report issued by the "Four-Power Working Group on Germany including Berlin." This report covers the planning to deal with the possibility that the Soviet Union might sign a "separate peace treaty" with the "German Democratic Republic." I think it is an excellent paper and recommend that the report be approved on a stand-by basis subject to final approval in the light of circumstances existing at the time the need for action arises.

I have also attached two papers concerning the work being done in the related field of Berlin contingency planning. In addition to an annotated text of the tripartite paper of April 4, 1959 (Tab C), there is a copy of the May 18, 1960 summary of "Berlin Contingency Planning" (Tab D) which was presented by the three Foreign Ministers to the three Heads of Government at Paris. Planning on Berlin is continuous, and other papers on such subjects as nonmilitary and economic countermeasures as well as a revised annotated text of the 1959 paper will be forthcoming. In the interim, however, the attached papers show the ground being covered.

I am sending copies of this memorandum and its attachments to Messrs. Bowles, Bohlen, and McGhee.

Recommendation

That you sign the attached memorandum to the President (Tab A) transmitting the "separate peace treaty" paper for his approval and the other papers for his information.

Attachments:

1. Memorandum for the President (Tab A).
2. Report of the Four-Power Working Group on Germany including Berlin on Planning to Deal with a "Separate Peace Treaty" between the Soviet Union and the "German Democratic Republic" (Tab B).
3. "Current Status of Berlin Contingency Planning"
4. "Berlin Contingency Planning" dated May 18, 1960 (Tab D).

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## MEMORANDUM FOR THE PRESIDENT

## Subject: Contingency Planning

Enclosed for your approval is the most recent report issued by the "Four-Power Working Group on Germany including Berlin." This report covers the planning to deal with the possibility that the Soviet Union might sign a "separate peace treaty" with the "German Democratic Republic." I think it is an excellent paper and recommend that you approve it on a stand-by basis subject to final approval in the light of circumstances existing at the time the need for action arises.

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Dean Rusk

## Inclosures:

1. Report of the Four-Power Working Group on Germany including Berlin on Planning to Deal with a "Separate Peace Treaty" between the Soviet Union and the "German Democratic Republic."
2. "Current Status of Berlin Contingency Planning" dated April 4, 1959, (BERCON D-2c dated July 22, 1960).
3. "Berlin Contingency Planning", dated May 18, 1960.

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February 10, 1961

REPORT OF  
THE FOUR-POWER WORKING GROUP ON GERMANY INCLUDING BERLIN  
ON  
PLANNING TO DEAL WITH A "SEPARATE PEACE TREATY"  
BETWEEN THE SOVIET UNION AND THE "GERMAN DEMOCRATIC REPUBLIC"

Since the Summit breakdown in May 1960, the Four-Power Working Group on Germany Including Berlin has, among other tasks, considered certain steps which might be taken by the Western Powers in the event the Soviet Union should carry out its threat to "conclude a separate peace treaty with the German Democratic Republic."

This report is submitted in order that the Four Governments may be informed of the status of this study and, if they think fit, give their approval of those aspects which have been completed to date, subject to final approval in the light of circumstances at the time when the need for action arises.

The report consists of the following documents, copies of which are attached:

Annex I - Review of the Problem of a Separate Peace Treaty.

Annex II - Draft of the Note Which Would be Sent to the Soviet Union by Each of the Three Powers in Response to a Soviet Proposal for a Peace Conference.

Annex III - Draft of the Note Which Would be Sent to the Soviet Union by the Federal Republic in Response to a Soviet Proposal for a Peace Conference.

Annex IV - Notes for Western Press Guidance and for Representations to the Governments Invited to a Peace Conference.

Annex V - Primary Responsibilities for Representations to Governments Invited.

Annex VI - Draft of the Statement to be Made by the Three Powers upon the Conclusion of a Separate Peace Treaty.

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REVIEW OF THE PROBLEM OF A SEPARATE PEACE TREATY

1. On numerous occasions the Soviets have threatened that they would conclude a separate peace treaty with the Soviet-occupied zone of Germany. Prior to the collapse of the summit meeting, Soviet statements were mostly to the effect that a separate peace treaty would have to be concluded at the moment when a Western refusal made it clear that no peace treaty "with the two German states" or no arrangement in the West Berlin problem would materialize. Immediately subsequent to the failure at Paris, Khrushchev stated repeatedly that the moment to conclude a separate peace treaty would come if, after the expiry of the six or eight months mentioned by the Soviets, the West were not ready to participate in a new summit meeting and in the solution of the "long overdue question" of a peace treaty. The current Soviet posture is that of playing down the separate peace treaty threat and of stressing Soviet desire for good relations with the new United States administration and the necessity for early talks concerning the German and Berlin problems.

2. Circumstances, particularly Soviet intentions, may have an influence on the drafts attached to this Report. The drafts should therefore be reviewed, before use, in the light of agreed estimates of Soviet intentions.

3. In the existing circumstances it seems appropriate to review once more the possible effects, both legal and factual, of a separate peace treaty and at the same time to examine the measures which the West should take in the event of such a treaty being concluded.

The Western Powers would regard such a separate treaty as null and void under the international law. A peace treaty to regulate in a legally valid form the consequences of the Second World War conducted by the Reich can be concluded only with all Germany. The Soviet-occupied zone of Germany is merely a part of Germany lacking the quality of a subject of international law; that zone cannot therefore under international law be a party to a separate peace treaty.

Besides, such a separate treaty could in no way prejudice the rights of the Western Powers or the rights of the Government of the Federal Republic of Germany as the only German government freely and legitimately constituted and therefore entitled to speak for Germany as the representative of the German people in international affairs. The Soviet Union, on the other hand, would violate the still existing Four-Power agreements concerning Germany both by concluding a separate peace treaty with the Soviet zone of Germany and by invoking such a treaty in an attempt to free itself from its obligations in respect to Germany and Berlin.

Even though irrelevant and ineffective under international law, such a separate treaty could, however, affect policies in practice.

According to a thesis repeatedly expounded by the Soviets and the rulers of the Soviet zone of Germany, the separate peace treaty would, upon its conclusion, terminate the rights of the West in, and with regard to, Berlin. Thus, for instance, Khrushchev stated in his press conference on June 3: "... and then (after the signature of such a treaty) the right of access to West Berlin will lapse for all the countries who were our allies during the war ... The German Democratic Republic will admit no one to Berlin without its consent, for all such rights will belong completely to the German Democratic Republic... ." These assertions, to be sure, are untenable and erroneous from a legal point of view, both because such a separate treaty would be legally ineffective and because neither the Soviet Union nor the Soviet-occupied zone of Germany can unilaterally deprive the three Western Powers of their original rights in, and regarding, Berlin. These assertions reveal, however, the Soviet objective to push the three Western Powers out of Berlin and should, therefore, be considered as propaganda in preparation for possible concrete measures. As long ago as in its note of November 27, 1958, the Soviet Union threatened to regard the rights of the West in Berlin as having lapsed and to transfer her own rights to the so-called Government of the Soviet-occupied zone. A separate peace treaty might possibly serve to make plausible to public opinion throughout the world such a transfer of rights if effected by invoking the alleged bestowal of "unlimited sovereignty" on the so-called German Democratic Republic. In actual fact, however, the Soviets would be confronted with the same problem as has confronted them since November 1958, viz., how to carry through concrete measures directed against the position of the Western powers. The practical effects on the Berlin question of a separate treaty will, therefore, ultimately depend on the degree of risk that the Soviet Union is prepared to run in using force. A separate treaty would not basically improve the present Soviet position in this dilemma. As regards the Western attitude, the reply to any measures taken by the Soviets would have to be found in the general framework of Berlin contingency planning.

The conclusion of a separate treaty between the Soviet Union and the Soviet-occupied zone of Germany would probably offer the Soviets certain practical political advantages in some parts of the world, particularly among the so-called noncommitted countries. While it is certain that all the states of the Communist bloc would in the end sign such a treaty, even though some of them might entertain considerable misgivings, it is just as certain that the Soviet Union would do everything in its power to persuade other states to become co-signatories to such a treaty or publicly acknowledge its "validity" and thereby grant the so-called German Democratic Republic the longed-for recognition. Thus, the term "peace treaty" would probably have a certain effect in a number of countries and might aid the Kremlin and East Berlin in their efforts to present the so-called German Democratic Republic as an independent and respectable state. On the other hand, it is reasonable to assume that the attitude of the states applied to will be determined in the last resort by a realistic appraisal of the advantages to be gained. This opportunist attitude has so far clearly worked out in favor of the West and the Federal Republic. All available indications point to the conclusion that the governments in question are not inclined, at any rate no so far, to accede to a separate peace

treaty or to alter their attitude toward the Soviet-occupied zone as a result of the conclusion of such a treaty. There is nonetheless the possibility that the conclusion of a separate treaty would tempt certain governments to revise their position to date. And if the Soviets and the regime in the Soviet-occupied zone succeeded in making a breach at any point whatsoever in the rampart of non-recognition, a chain-reaction might well follow. Some countermeasures would, however, be open to the West.

4. The formality of concluding a peace treaty between the West and the Federal Republic cannot be contemplated as a counter-move. It would not be an adequate means of obstructing the Soviet intentions. For any such "Western peace treaty" would undermine the basis of the Western presence in Berlin. It would also mean the West giving up its present conception of the German question, according to which Four-Power responsibility continues to exist until Germany is reunited and a peace treaty has been concluded with the all-German government subsequently formed. Furthermore, the conclusion of such a "Western" peace treaty might render the Federal Government and its Allies guilty in the eyes of the German people of sanctioning the partition of Germany.

The goal of the West must rather be:

a. to maintain the state of political suspension in the German question until reunification is possible; and

b. to prevent the Soviet Union from inducing states outside the Eastern bloc to participate in a separate peace.

5. As regards the appropriate time to apply Western countermeasures, there are two possibilities to be considered: Firstly, when the proposal for a separate treaty can be expected to take concrete form (i.e., when invitations are dispatched to a "peace" conference), and secondly, the actual moment of the conclusion of such a treaty.

Planning to deal with the first of these eventualities is the more pressing problem. The following steps should be considered:

a. Representations to the governments of all the states invited to the conference as former combatants. In such case, suitable emphasis should be placed on the legal aspects which militate against a separate peace; this would provide the government concerned, and especially those of the noncommitted world, which are to our knowledge not keen on participating in a separate peace, with arguments for declining the invitation by referring to the legal dubiety of the Soviet proposal and would enable them to avoid siding with the Soviet view. A discussion of primary responsibilities for representations to the governments invited will be found in Annex V to this Report.

b. Representations to Moscow. The Three Powers and the Federal Republic should send notes to the Soviet Government covering the legal aspects and at the same time pointing out in all due form to the Soviet Government its obligations arising out of Four-Power responsibility. Drafts of such notes will be found in Annexes II and III.

c. These notes should also be published as a statement of the Western position. Supplemental talking points should also be prepared for press guidance and for use in discussions with the various countries invited to the peace conference. Draft notes for such use will be found in Annex IV of this report.

d. If there is reason to believe that the separate peace treaty will purport to deprive the Three Powers of their rights with respect to Berlin or otherwise affect the status of the city, the Three Powers might also consider proceedings against the Soviet Government in the International Court of Justice with a view to obtaining a judgment confirming the continued validity of these rights, with special emphasis on the right of access to Berlin.<sup>7\*</sup>

6. For the moment of conclusion of a separate treaty, or immediately thereafter, the following steps should be considered:

a. The Three Powers should make a solemn statement in conjunction with the Federal Government (analogous to the relevant parts of the Berlin statement of July 29, 1957), affirming the sole legitimacy of the Federal Government to speak for the ~~entire~~ German people, the continuation of Four-Power responsibility and the necessity of re-establishing Germany's unity in accordance with the principle of self-determination and on the basis of a peace treaty concluded only with a freely elected, all-German government.

b. It would not be advisable to draft the final text of this until the text of the separate treaty is available, for the possibility, however improbable, must also be considered that the treaty might in some form or other preserve the rights of the Western Powers in Berlin. A preliminary draft, however, will be found in Annex VI.

c. If, at this time, it seems that the withdrawal by the Soviets from their functions with respect to Allied access to Berlin is imminent, the Three Governments would presumably give to the Soviet Government the notice contemplated in paragraph 2 of the April 4, 1959 paper on Berlin contingency planning.

7. It would seem expedient that the position taken by the Three Powers be endorsed and confirmed by all the NATO Governments.

8. It should be noted that the actions suggested above are largely palliative and are not, in themselves, likely to deter the Soviet Union from going ahead with a separate peace treaty once it has taken the decision to do so.

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\* U. S. proposal not discussed in Working Group. United States is producing a paper on this subject.

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ANNEX II

DRAFT OF NOTE WHICH WOULD BE SENT TO THE SOVIET UNION  
BY EACH OF THE THREE POWERS IN RESPONSE TO A SOVIET PROPOSAL  
FOR A PEACE CONFERENCE

Her Majesty's Government in the United Kingdom have received the Note addressed to them by the Soviet Government on ... proposing a conference for the conclusion of a peace treaty with the so-called "German Democratic Republic."

H.M.G. are unable to accept this proposal, and wish to inform the Soviet Government of their reasons for this.

At the end of the Second World War the victorious Powers entered into a number of agreements for the determination of the German problem, including, for instance, the declarations of June 5, 1945, proceeding from the principle that questions concerning Germany as a whole could be settled only by them acting jointly. A peace settlement with Germany is foremost among those questions. The Potsdam Agreement of 1945, for instance, referred to "the preparation of a peace settlement for Germany to be accepted by the Government of Germany when a Government adequate for the purpose is established."

The Soviet Government cannot withdraw unilaterally from these agreements and seek to negotiate unilaterally with a part of Germany; nor would such a withdrawal invalidate the rights of H.M.G. and the other governments responsible for the settlement of the German question, since these rights derive absolutely from the unconditional surrender of Germany, and were not granted by or negotiated with the Soviet Union. For the same reasons, H.M.G. cannot engage in the negotiation of a peace settlement with a part or parts of Germany, since their rights and obligations are towards Germany as a whole.

The obligation to maintain the unity of Germany was affirmed by the victorious Powers from the beginning, and has been acknowledged by the Soviet Union as recently as 1955, in the Geneva directive of the four Heads of Government, which says:

"The Heads of Government (of France, the United Kingdom, the Soviet Union, and the United States), recognising their common responsibility for the settlement of the German question and the reunification of Germany, have agreed that the settlement of the German question and the reunification of Germany by means of free elections shall be carried out in conformity with the national interests of the German people."

What the Soviet Union is now proposing, is an attempt to determine the fate of Germany through an agreement with the government of the so-called "German Democratic Republic" which is neither representative of Germany as a whole nor of any part thereof, but has been created by the Soviet Union herself and against the will of the German people as an instrument of Soviet foreign policy. The part of Germany subjected to that regime can therefore not be regarded as an independent sovereign state.

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CONFIDENTIAL

- 2 -

Therefore, a "peace treaty" with the part of Germany's territory termed "German Democratic Republic" by the Soviet Government, can have no validity in international law.

The Soviet Government asserts that in thus acting unilaterally it is taking account of the "de facto situation." But this is in fact a situation created by the Soviet Union in violation of its agreements and of the principle of self-determination, a situation which has been rendered more dangerous to peace by the violation by the Soviet Government of its obligations in respect of Berlin.

Therefore, the Soviet Government's proposal has no constructive aims whatsoever. It is rather directed towards intensifying the artificial partition of Germany and towards prolonging for an indefinite time the enforced bondage of a section of the German people.

By its signature of the United Nations Charter and in numerous statements, the Soviet Government is committed to respect for the principle of self-determination. But in open contradiction of this, it has so far refused that choice to the German people as a whole by denying it to the seventeen million Germans under its domination. On the contrary, it is now proposing to perpetuate that denial by concluding a final settlement with a regime which is not representative of those people, does not enjoy their confidence and is in fact no more than its own creation and an extension of its own authority.

Thus the Soviet proposal contravenes both moral and legal principles. It is also calculated dangerously to increase political tensions. The Soviet Government is deliberately threatening the Federal Republic of Germany and her allies. If the Soviet Government persists, it will gravely prejudice the prospects for international peace. The responsibility will lie wholly with the Soviet Government in thereby bringing about an unnecessary increase in international tensions. The Soviet Government professes to be interested in peace and a relaxation of tensions. If this is so, there can be no need for it to take a deliberately provocative initiative which must arouse the apprehensions of all peace-loving peoples.

H.M.G. share the desire of the German people for the conclusion of a just peace. But a morally and legally valid peace treaty can be concluded only with Germany as a whole, represented by a Government freely elected by the entire German people.

H.M.G. herewith declare anew that in recognition of the great responsibility imposed on them as, indeed, on all the Government concerned, they remain ready and willing to play their full part in the just and equitable solution of this problem and thus to help secure the peace so ardently desired by all nations.

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ANNEX III

DRAFT OF NOTE WHICH WOULD BE SENT TO SOVIET UNION  
BY FEDERAL REPUBLIC IN RESPONSE TO SOVIET PROPOSAL FOR PEACE CONFERENCE

The Government of the Union of Soviet Socialist Republics has summoned a conference aiming at the conclusion of a "peace treaty" with .....

The Government of the Federal Republic of Germany protests most vigorously against such a proposal. It is authorized and obligated to do so, since it is the only freely elected German Government and must, therefore, speak for the whole German people, including that part of them in the so-called "German Democratic Republic", which, under a Soviet dominated regime, has so far been denied any free expression of its will.

At the end of the war, the Soviet Union, France, the United Kingdom, and the United States proceeded from the principle that questions concerning Germany as a whole could be settled only by them acting jointly. They furthermore undertook the obligation to maintain the unity of Germany. The Soviet Union has repeatedly acknowledged this obligation, as for example in the Geneva directive of the four Heads of Government in July 1955, which says:

"The Heads of Government (of France, the United Kingdom, the Soviet Union, and the United States), recognizing their common responsibility for the settlement of the German question and the reunification of Germany, have agreed that the settlement of the German question and the reunification of Germany by means of free elections shall be carried out in conformity with the national interest of the German people."

What the Soviet Union is now proposing, contrary to this obligation, is an attempt to determine the fate of Germany through an agreement with the government of the so-called "German Democratic Republic", which is representative neither of Germany as a whole nor of any part thereof, but has been created by the Soviet Union itself and against the will of the German people as an instrument of Soviet foreign policy. The part of Germany subjected to that regime, therefore, cannot be regarded as an independent sovereign state. Consequently, nowhere in the world outside the Communist bloc is it recognized as a state.

Therefore, a "peace treaty" with the part of Germany's territory termed "German Democratic Republic" by the Soviet Government can have no validity in international law.

The Soviet Government asserts that in thus acting unilaterally it is taking account of the "de facto situation." But this is in fact a situation created by the Soviet Union in violation of its agreements and of the principle of self-determination, a situation which has been rendered more dangerous to peace by the violation by the Soviet Government of its obligations in respect of Berlin.

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The German people will always continue to strive for their unity and freedom. The fact that the German people has been divided for over 15 years by an artificial split imposed upon them through the refusal of the Soviet Government to grant self-determination cannot affect the unity of the German people based upon a common conception of life and culture developed through past centuries.

Therefore, the Soviet Government's proposal has no constructive aims whatsoever. It is rather directed exclusively towards intensifying the artificial partition of Germany and towards prolonging for an indefinite time the enforced bondage of a section of the German people. The German Federal Government, therefore, calls attention with every possible emphasis to the fact that the acceptance of the proposal would violate the claim of the German people to freedom and contravene the principle of self-determination established in the United Nations Charter as one of the principles of the United Nations.

The Soviet Union is one of the signatories of the United Nations Charter and has, in addition, proclaimed the principle of self-determination in numerous statements. Thus, the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, N. S. Khrushchev, has as late as December 1, 1959 subscribed to the principle of self-determination in a speech in Budapest when he stated, "every nation has the right to choose the regime and the social system under which it wants to live."

In open contradiction, however, to its professions in favour of the principle of self-determination, the Soviet Government has so far refused that choice to the German people as a whole by denying it to the 17 million Germans under its domination. There, in the center of Europe, the Soviet Government has the opportunity and the obligation to put into practice its profession in favour of self-determination of peoples and thus at long last to prove that it stands not only in propaganda but also in practice for this fundamental principle.

As long as the Soviet Government denies to the German people the self-determination of which it makes verbal profession, and as long as it insists on setting up and developing in Europe the Soviet system which in practice is nothing but a new form of colonialism--doing so at a time when the vestiges of former colonialism are progressively disappearing in other parts of the world--as long as the Soviet Government acts in such a way, no credence can possibly be given to any of its declarations in favour of self-determination.

Thus the Soviet proposal contravenes both moral and legal principles. It is also calculated to increase dangerously political tensions. The Soviet Government is deliberately threatening the Federal Republic of Germany and her allies. If the Soviet Government persists, it will create a most serious situation for international peace. The responsibility will lie wholly with the Soviet Government in thereby bringing about an unnecessary increase in international tension. The Soviet Government professes to be interested in peace and a relaxation of tensions. If this is so, there can be no need for it to take a deliberately provocative initiative which must arouse the apprehensions of all peace-loving peoples.

CONFIDENTIAL

- 3 -

The German people and the German Federal Government desire the conclusion of a just peace. But a morally and legally valid peace treaty can be concluded only with all Germany represented by a government freely elected by the entire German people.

The German Federal Government herewith declares anew that in recognition of the great responsibility imposed on it, as indeed on all the Governments concerned, it is prepared and willing for its part to contribute its share to the solution of this problem and thus to help secure the peace so ardently desired by all nations. In doing so, the German Federal Government is sure of the approval of the whole German people.

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NOTES FOR WESTERN PRESS GUIDANCE  
AND FOR REPRESENTATIONS TO GOVERNMENTS INVITED TO PEACE CONFERENCE

1. A separate "peace treaty" with East Germany would be invalid under international law. A peace treaty connotes a final settlement of the consequences of a war, such as frontiers, treaty obligations, claims and debts, and the like. A peace treaty with Germany cannot be signed with the Federal Republic of Germany, nor with the so-called "German Democratic Republic", but only with the German State as a whole (which still exists as an entity under international law); that is, with a German Government which can act for and bind Germany as a whole. The treaty proposed by the Soviet Union therefore could not be a "peace treaty" as it is purported to be.

2. The treaty would be an empty act, settling none of the consequences of the war. In particular it could not bring "peace"; nor could it settle, or help to settle, either the central problem of the future of Germany, or the related problems of the military and security arrangements which should accompany German reunification and the conclusion of a valid peace treaty with Germany. It could thus make no contribution toward peace and security in Europe: in fact its purpose and effects are directly opposite to this aim.

3. The chief effect of the treaty, and therefore its presumed purpose, would be to make it more difficult to settle the problems of Germany and European security. The history of the period since the war shows how the Soviet Union has hitherto blocked all attempts to achieve a German settlement and a lasting basis for European security by a series of devices for evading her responsibility under Four-Power agreements. A purported "peace treaty" with East Germany would be the culminating device by which the Soviet Union would hope finally to escape from her responsibility and so block any future progress.

4. The treaty would amount to an attempt to legalize and perpetuate the division of Germany. This would subordinate the desires, freedom and good of the German people to the ambition of the Soviet and East German leaders (which they have often made clear in their statements of policy) to consolidate the Communist system in East Germany with a view to its eventual extension to the whole of Germany. What the people of East Germany think of the Communist system under which they have lived for 15 years can be deduced from the fact that the Soviet and East German leaders have never yet dared to allow them to express their opinion in a free vote. Refugees are leaving East Germany at the rate of over 200,000 per year.

5. Continued denial to the German people of reunification is both unjust and dangerous. Reunification by free all-German elections is a legitimate aspiration of the German people. They should not be denied self-determination, which the Soviet Union is often loudest in demanding for other peoples. The prolonged

and unnatural frustration of this common German desire (which is intended as the consequence of a separate "peace treaty" with East Germany) is bound to be a continual source of tension, judging from experience in other parts of the world. This might apply in particular to the population of East Germany.

6. The Soviet invitation to a peace conference with East Germany is also intended as a means of securing international recognition of the "German Democratic Republic." Far from being a constructive forward step, it would only deepen the unnatural division of Germany if the existence of two separate German states were accepted. The East German regime (which is not a properly constituted government but merely one imposed on the people of East Germany by the Soviet Union, and supported by the presence of \_\_\_\_\_ Soviet troops) has no claim to recognition as a government, not to speak of acceptance on an equal footing with the Government of the Federal Republic. The good will of the latter would be forfeited by any country's accepting such a Soviet invitation. The Federal German Government (which is the only German Government freely and legitimately constituted and therefore entitled to speak for Germany as the representative of the German people in international affairs) plays a full and independent part in world affairs (unlike the East German "Government" which is an instrument of the Soviet Union), in particular in the growing extent of its aid to the underdeveloped countries.

7. The Western Powers have put forward a phased program for bringing about a peace treaty with an all-German Government. This is in the Western Peace Plan (presented at the Geneva Foreign Ministers' Conference in 1959), which would provide both reunification in freedom for the Germans and full security for the Soviet Union and her allies. It is still open to the Soviet Union to negotiate upon this basis, as she ought to do. The Soviet proposals (put forward in the Soviet Government's Notes to the Western Powers of January 10, 1959, and at the Geneva Conference) on the draft of a peace treaty with "the two German States" (or a confederation of them) do not represent such an attempt to negotiate. They entail in effect the formal partition of Germany into two separate states without provision for free elections, and they contain discriminatory provisions designed to alter the military balance in Europe to the advantage of the Soviet Union. Such a "peace treaty" would constitute a diktat imposed on the German people against their wishes.

8. Western rights in Berlin would remain unaffected by a separate "peace treaty." The Soviet Union claims that this would extinguish Western rights in Berlin. But these rights, including the right of access to Berlin, are not held from the Soviet Government. They derive from the Allied right of occupation, which in turn is derived from the unconditional surrender of Germany. Allied rights of access to Berlin are inherent in their right to maintain garrisons in the city, and were recognized by the Soviet Government in subsequent agreements, e.g. the New York Agreement of June 20, 1949, on the termination of the Berlin blockade, and in practice over many years. They cannot be unilaterally abrogated by any act of the Soviet Government.

CONFIDENTIAL

- 3 -

9. A separate "peace treaty" would be a grave danger to peace if the Soviet Union used it, as it has threatened, as an excuse to prevent the Western Powers from enjoying their rights of access to Berlin. The Western Powers are determined to maintain their access to the city and to fulfil their obligations to protect the West Berliners. If they were to find their position challenged, they would have to react.

10. Confidence in the possibility of maintaining freedom elsewhere would be undermined if the free world were to betray the trust placed in it by the 2½ million West Berliners.

11. The Soviet Union must be given no encouragement in its efforts to alter a situation to its own advantage without regard to international agreements and to the interests of the peoples concerned. The Soviet Government has repeatedly stated that international questions can only be solved by negotiation, not be unilateral action. Soviet protestations of a desire to promote detente through international agreement on such vital matters as disarmament are unconvincing when viewed in the light of Soviet unilateral action contrary to existing international agreements on Germany and Berlin.

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ANNEX V

PRIMARY RESPONSIBILITY FOR REPRESENTATIONS TO GOVERNMENTS INVITED

While each of the Three Western Governments participating in quadripartite responsibility for questions concerning Germany as a whole might wish to make representations to each of the countries which may be invited to a conference for the conclusion of a "peace treaty with the GDR", there would be advantage in having the lead taken, in each instance, by one of the Three Governments which has the closest relations with the country concerned and might thus be in the best position to influence the latter's decision. Thus the United Kingdom might take the lead in presenting the Western case to members of the Commonwealth, France to members of the French Community, and the United States to friendly members of the Organization of American States. In the cases of other countries which might be invited, the decision as to which of the Three Powers should have primary responsibility could best be left to the ambassadors on the spot. These representations should be accompanied by the transmission of a copy of the note to the Soviet Government (Annex II). Each of the three Western Governments should also, if possible, make representations to the governments of the Soviet bloc, transmitting to them also a copy of the note to the Soviet Government.

The Federal Republic might also wish to make representations to all of the invited countries with which it has diplomatic relations. These representations might include not only the points covered in Annex IV but also a copy of its note to the Soviet Government (Annex III) and a reminder, if appropriate, of the effect which the country's participation in a "peace treaty with the GDR" might have on its relations with the Federal Republic.

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ANNEX VI

DRAFT OF THE STATEMENT TO BE MADE BY THE THREE POWERS,  
IN CONJUNCTION WITH THE FEDERAL REPUBLIC, UPON THE CONCLUSION  
OF A "SEPARATE PEACE TREATY" BETWEEN THE SOVIET BLOC AND THE "GDR"

1. The opening paragraph will refer to recent developments. These may include: (1) an invitation from the Soviet Union to a conference for the conclusion of a peace treaty along the lines of its 1959 draft with "the two German states"; (2) the rejection of this invitation by the Three Powers and the Federal Republic, together with a restatement of the Western position on Germany; (3) an invitation by the Soviet Union to a conference for the conclusion of a peace treaty with the "GDR"; (4) the conclusion of a "peace treaty" between the Soviet bloc (and possibly some "neutrals") and the "GDR." It is likely, but not certain, that the first three stages may be accompanied by increasing pressure on the Western position in Berlin and that the "separate peace treaty" may include the formal and complete renunciation by the Soviet Union of its responsibilities in Germany, including its responsibilities with respect to Berlin, deriving from occupation and quadripartite agreements. If the questions of the "peace treaty" and Berlin have been linked in this manner, the recent developments presumably will also include: (5) the notice to the Soviet Government; and (6) the public statement contemplated in the tripartite paper of April 4, 1959 on Berlin Contingency Planning.

2. The Soviet Union, in taking such unilateral action, has knowingly created a situation which can lead to a breach of the peace. In view of the seriousness of the situation thus created, the Governments of France, the United Kingdom, and the United States wish to make quite clear what their position is.

3. The document which has been signed by the Soviet Union with the regime which the Soviet Union calls the "GDR", and other states whose relationship to the Soviet Union is well understood is neither a peace treaty nor a substitute for a peace treaty. It is merely an attempt by the Soviet Union to put a facade of legality on its efforts to perpetuate Communist rule in East Germany in disregard of both international agreements and the known dangers of suppression of the desire for national and political self-expression.

4. The so-called "peace treaty" has no international validity. It has been concluded by the Soviet Union with what is, in fact, an agency of the Soviet Union, for the "GDR" is a regime which has been imposed by the Soviet Union on Eastern Germany and which has never acquired any element of legitimacy. It has been evident for years that the East German regime is so unrepresentative of the population of East Germany that it could not survive free elections. Never having been chosen or approved by the free decision of the population of East Germany, the "GDR" holds no mandate to speak, or negotiate, for that population, much less for the population of Germany as a whole.

CONFIDENTIAL

CONFIDENTIAL

- 2 -

5. The so-called peace treaty with the "GIR" has no more effect upon existing commitments of the Soviet Union with France, Great Britain, and the United States than the so-called granting of sovereignty to the "GIR" by the USSR or the USSR—"GIR" agreement of September 20, 1955. In their notes of October 3 and 27, 1955 regarding the latter, the Governments of France, the United Kingdom, and the United States declared "these agreements cannot affect in any respect or in any way the obligations of the USSR under agreements and arrangements on the subject of Germany, including Berlin, previously concluded between France, the US, the UK, and the USSR." This position has been reiterated on numerous occasions. Nothing has happened in the interim to make the "GIR" any more representative, any more democratic, or any more capable of relieving the Soviet Union of its obligations.

6. The Governments of France, the United Kingdom, and the United States have repeatedly warned of the potential danger of unilateral or forcible attempts by the Soviet Union to resolve any or all aspects of the question of Germany without regard for its own international obligations, for the interests of other countries, and for the rights of the German people. The use of the so-called peace treaty between the USSR and the "GIR" as a pretext or ostensible justification for any action of this nature would make this danger immediate. The Three Governments, therefore, wish to remind the Soviet Government that they are prepared to defend their interests with respect to Germany, and to fulfil their obligation to maintain the freedom and security of Berlin.

7. The Three Governments are prepared at any time to resume negotiations with the Soviet Union looking toward a just and reasonable settlement of the questions of Germany and European security. If the Soviet Union would recognize that such a settlement must be based on respect for the principle of self-determination, there should be little difficulty in achieving it. The key to a solution is to be found in the Geneva directive of July 23, 1955, to which the Soviet Government subscribed and which declared that "the settlement of the German question and the reunification of Germany by means of free elections shall be carried out in conformity with the national interests of the German people and the interests of European security." The Three Powers proposed a phased program to settle these questions with due regard for the interests of all powers concerned, including the Soviet Union, at Geneva on May 14, 1959. The Three Governments hope that the Soviet Government will, in view of the danger implicit in its present course, recognize the wisdom and the importance of resuming negotiations on the basis of the principles which underlie these proposals.

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BERLIN CONTINGENCY PLANNING

I

Following the Soviet threats of November 1958, a Tripartite Planning Group was established in Washington to coordinate planning by the Three Embassies at Bonn, General Norstad's Tripartite Staff ("Live Oak") and the Headquarters at Berlin for the various contingencies involved in a withdrawal by the Soviet Union from its functions with respect to Allied access to Berlin. The Germans have been acquainted with some aspects of this planning. No public attention should be drawn to the fact that Berlin contingency planning is now under discussion, but the Foreign Ministers wish to present a summary of the status of planning to the Heads of Government in order that the Heads of Government:

- (1) confirm the agreements which have already been made on some measures,
- (2) be made aware of certain decisions which may have to be taken at a later time, and
- (3) direct that additional planning be undertaken.

II

Soviet intentions are not yet clear. It is considered unlikely that Khrushchev will in the immediate future take any action beyond preliminary steps looking toward the eventual conclusion of a "separate peace treaty." However, should the Soviets withdraw, or appear likely to withdraw, from their access functions, Allied planning contemplates the following measures:

1. Prior to Soviet Action

(a) Preparatory Military Measures

Certain quiet, precautionary, and preparatory military measures, of a kind which would not cause public alarm but would be detectable by Soviet intelligence, were taken following

SECRET

SECRET

- 2 -

the Soviet threat of November 1958 to demonstrate our determination to maintain freedom of access. Plans exist for additional measures of this sort, such as increased alert, preparation for unit deployments or dispersal, and preparation for evacuation of selected non-combatants in Germany and Berlin. The Governments will in due course have to decide which of these or other measures of this type should be taken and at what points.

(b) United Nations Action

It has been agreed in principle that, if Soviet unilateral action to withdraw from access functions were clearly imminent, it would be desirable to attempt to forestall this through a United Nations Security Council resolution calling on the Four Powers not to violate existing agreements regarding Berlin, to negotiate their differences, and to report the results of these negotiations to the Security Council. It is considered premature to initiate Security Council action now, but an urgent decision could be required at any time.

2. At Time Of or After Soviet Action

(c) Notice to Soviet Government and Public Statement

Drafts have been prepared for notes to the Soviet Government and a public statement (which would not only explain to world opinion but also put the GDR on notice) re-emphasizing Soviet responsibility under agreements concerning Berlin, explaining our legal interpretation of the Soviet action, and serving notice as to the procedures which we would follow in maintaining our access after the Soviet withdrawal (as in (d) and (e) below).

(d) Surface Access Procedures

After a Soviet withdrawal, every effort would be made to continue normal traffic, but the Three Powers would put into effect new procedures for the purpose of identifying Allied movements as being entitled to unrestricted access to Berlin. The procedures involve handing over to the East German personnel at each check-point a copy of the Allied travel order, but not accepting the stamping of a travel order as a condition of passage. Practical preparations for instituting the new procedures have been completed.

(e) Air Access Procedures

Every effort would be made to maintain unrestricted air

SECRET

SECRET

- 3 -

access after a Soviet withdrawal from the Berlin Air Safety Center, and the Center would continue to operate on a tripartite basis. For safety considerations, attempts would be made to communicate flight information directly by radio broadcasts and, if a feasible method for doing so is found, directly to the East German air traffic control authorities. Exact details regarding the possible use of teletype or telephone for this purpose remain to be worked out.

III

If the foregoing measures have been taken and the East Germans refuse to accept the surface access procedures mentioned or attempt to block air access, Governmental decisions will be required on the implementation of the following aspects of planning which have been developed on a stand-by basis but without commitment as to the necessity or the timing of their implementation.

1. Measures to Maintain Air Access

(a) Plans exist for maintaining civil air services under flight safety conditions not usually considered normal.

(b) Plans exist for a "garrison airlift" to transport by air the personnel and equipment of the Allied forces which cannot move by surface routes.

(c) Plans exist for the movement of civilian passengers by military aircraft when civil airlines are no longer prepared to operate.

(d) Plans have been developed to cope with physical interference with air access.

2. Probe of Soviet Intentions

There are three alternate plans for a probe along the Autobahn to determine whether the Soviets would use or permit the use of force to prevent passage. Decisions would have to be made regarding the timing of the probe and which of the three detailed plans would be accepted.

3. More Elaborate Military Measures

The Military commanders have plans for more elaborate military measures including measures which, while they might not succeed in reopening access in the face of Soviet determination,

SECRET

SECRET

- 4 -

could nonetheless "take the initiative regarding ground access from the Soviets, provide circumstances in which negotiations with the Soviets might prove fruitful, and compel the Soviets to face the unmistakable imminence of general war." Decisions regarding the implementation of such plans, choices of possible courses, and timing of actions would have to be taken by the Governments in the light of circumstances as they develop.

IV

Consideration has been given to the possibility of indirect countermeasures, for example economic measures, measures against Soviet aviation, and a naval blockade in order to increase pressure on the Soviet Union and the GDR in the event Allied access is forcibly obstructed. If the Heads of Government approve, further consideration will be given to those aspects of planning.

V

The planning discussed above relates only to the possibility of interference with Allied access. Extensive stockpiles exist in Berlin and there are plans for a Quadripartite Berlin Airlift in the event of a total Soviet-GDR blockade of land access routes. It is considered advisable that more attention be given to the possibility of gradual harassment of civil (i.e., German) access. If the Heads of Government approve, planning about this will be initiated jointly with the Germans.

May 18, 1960

SECRET